

DA 6-12

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Yed Z. Salahuddin et al.

Serial No.: 09/991,583

Filed: November 16, 2001

Docket: 30418.2US01

Title: PREPARATION OF REPLICATING MACROPHAGES AND USE IN DIAGNOSIS AND THERAPY

CERTIFICATE UNDER 37 CFR §1.8:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 8, 2006.

By:

Renato Marco P. Domingo
Name: Renato Marco P. Domingo

55 S. Lake Avenue, Suite 710
Pasadena, California 91101
August 8, 2006

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

We are transmitting herewith the attached:

- ☒ Transmittal sheet, in duplicate, containing Certificate under 37 CFR §1.8
- ☒ Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action
- ☒ Exhibits 1-6
- ☒ Return postcard

Please charge any additional fees or credit overpayment to Deposit Account No. 50-0306. A duplicate of this sheet is enclosed.

MANDEL & ADRIANO

55 South Lake Avenue, Suite 710
Pasadena, California 91101
(626) 395-7801

By:

Sarah B. Adriano

Name: Sarah B. Adriano
Reg. No.: 34,470
Initials: SBA



BEST AVAILABLE COPY

Dkt. 30418.2US01/SBA/HVR

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Syed Z. Salahuddin

Serial No.: 09/991,583

Examiner: Leon B. Lankford, Jr.

Filed: November 16, 2001

Group Art Unit: 1651

Title: PREPARATION OF REPLICATING MACROPHAGES AND USE IN
DIAGNOSIS AND THERAPY

55 S. Lake Avenue, Suite 710
Pasadena, California 91101
August 8, 2006

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICE ACTION**

This Petition is being submitted in response to the Notice of Abandonment dated March 5, 2004 in connection with the above-identified patent application.

The Notice stated that the application was abandoned in view of Applicant's failure to timely file a proper reply to the Office Action mailed on July 1, 2003. However, Applicant never received the Office Action mailed on July 1, 2003.

In April 2004, Applicant contacted Examiner Lankford regarding the status of the application and indicated that the prosecution of the subject application was transferred back to him from the law firm Foley & Lardner on March 27, 2003. Further to his conversation with the Examiner, Applicant was advised that an Office Action was issued on July 1, 2003 in connection with the subject application.

On April 19, 2004, Applicant wrote to Examiner Lankford requesting withdrawal and reinstatement of the application based on non-receipt of the July 1, 2003 Office Action (attached herewith as **Exhibit 1**). Additionally, Applicant petitioned to revive the subject application due to unavoidable and unintentionally delay in responding to the July 1, 2003.

On November 9, 2004, Applicant again contacted Examiner Lankford and indicated that he did not received the July 1, 2003 Office Action and requested that the subjection application be reinstated as suggested by the Examiner (see November 10 and 17, 2004 letters to Examiner Lankford attached herewith as **Exhibits 2 and 3**, respectively).

Since the above referenced Office Action was not received by the Applicant, as indicated in 1156 O.G. 53, "Withdrawing the Holding of Abandonment When Office Actions are not Received" and *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), evidence to establish non-receipt of an Office Action (or notice) are attached in this case.

Applicant hereby submits a declaration by the inventor, Dr. Syed Z. Salahuddin, attesting that a search of the file wrapper and his calendar showed that the Office Action was not received (**Exhibit 4**). Since Dr. Salahuddin is an independent inventor, he keeps no docket record where Office communication would have been entered had it been received. Instead, if the Office Action would have arrived, it would be kept in the file wrapper, and it was not.

Additionally, Applicant submits a declaration by Mr. Saied Kashani, the attorney in charge of the client relationship at that time (**Exhibit 5**). A copy of the Patent Record Sheet from Foley & Lardner is also attached herewith showing the non-receipt of the Office Action by their firm (**Exhibit 6**).

Applicant: Syed Z. Salahuddin
Serial No.: 09/991,583
Filed: November 16, 2001
Page 3

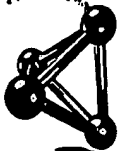
Concurrently with this Petition, Applicant also hereby petition to reset the time period for reply to the above Office Action.

No fee is deemed necessary in connection with the filing of this Petition. However, if any fee is necessary, Applicant hereby authorizes the Patent Office to charge any additional fee to Deposit Account No. 50-0306.

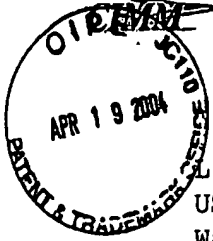
Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Sarah B. Adriano", is written over a horizontal line.

Sarah B. Adriano
Registration No. 34,470
SaraLynn Mandel
Registration No. 31,853
Mandel & Adriano
55 S. Lake Avenue, Suite 710
Pasadena, California 91101
(626) 395-7801
Customer Number: 26,941



California Institute of Molecular Medicine



April 19, 2004



L. Blaine Lankford
US Patent & Trademark Office
Washington, DC 20231

re: Patent Application No. 09/991,583
Applicant: Syed Z. Salahuddin

Dear Mr. Lankford:

Thank you for our conversation concerning the above patent.

Originally I hired the law firm of Foley & Lardner to prosecute this patent application for me. On March 27, 2003, prosecution was transferred back to me and the address was changed to my office address.

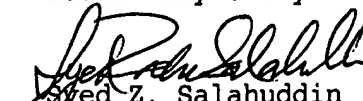
I understand that an Office Letter was sent sometime in July 2003. I simply did not receive this notice and I can find no record of it in my files.

I respectfully request that the abandonment be withdrawn and the application re-instated based on non-receipt of the Office Letter.

Alternatively, I respectfully petition for re-instatement due to unavoidable and unintentional delay in responding to the Office Letter due to my not receiving the notice. Please note that I have many patents issued to me as inventor and I would most definitely have responded timely to the Office Letter if I had received it.

Thank you for your kind consideration of this petition.

Yours very truly


Syed Z. Salahuddin
Applicant/Inventor

CALIFORNIA INSTITUTE OF MOLECULAR MEDICINE

1710 DONLON STREET UNIT 6
VENTURA, CALIFORNIA 93003
TELEPHONE 805.654.8552
TELECOPY 805.654.8534



CONFIRMATION COPY

November 10, 2004

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NOV 23 2004
NOV 23 2004

TECH CENTER 2800
TECH CENTER 1600/2900

VIA TELECOPY to 571 273 0917

L. Blaine Lankford
US Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313

re: Application No. 09/991,583
PREPARATION OF REPLICATING MACROPHAGES AND USE
IN DIAGNOSIS AND THERAPY

Dear Mr. Lankford:

I am the inventor on the above patent application. Thank you for our conversation of yesterday.

As we discussed, I did not receive the office action so I was unable to reply. When I later discovered the patent had been dismissed as abandoned, I wrote concerning this and requested restoration of the application on April 19, 2004 (attached please find record of mailing and delivery).

As you suggested I am writing again to state that I did not receive the office action. I think the office action took place about the time or shortly after the file was transferred from my attorney to me.

I respectfully request that the application be reinstated and allowed to proceed.

Yours very truly,


Zaki Salahuddin

CALIFORNIA INSTITUTE OF MOLECULAR MEDICINE

1710 DONLON STREET UNIT 6
VENTURA, CALIFORNIA 93003
TELEPHONE 805.654.8552
TELECOPY 805.654.8534



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PO Box 1450
Alexandria, VA 22313

re: Application No. 09/991,583
PREPARATION OF REPLICATING MACROPHAGES AND USE
IN DIAGNOSIS AND THERAPY

Dear Mr. Lankford:

In my letter of November 10 I forgot to include a copy of my earlier letter and petition of April 19, 2004 in which I also requested relief from failure to respond to the office letter due to my non-receipt of the office letter.

Attached please find a copy of my April 19, 2004 together with proof of sending (US Express Mail receipt and delivery confirmation).

I gratefully appreciate our conversation and I hope the application can be reinstated.

Yours very truly,


Zaki Salahuddin

CALIFORNIA INSTITUTE OF MOLECULAR MEDICINE

1710 DONLON STREET UNIT 6
VENTURA, CALIFORNIA 93003
TELEPHONE 805.654.8552
TELECOPY 805.654.8534



CONFIRMATION COPY

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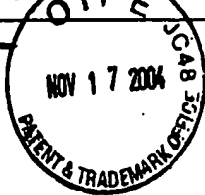
I respectfully request that the application be reinstated and allowed to proceed.

Yours very truly,


Zaki Salahuddin



California Institute of Molecular Medicine



April 19, 2004

ER389899395US

L. Blaine Lankford
US Patent & Trademark Office
Washington, DC 20231

CONFIRMATION COPY
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re: Patent Application No. 09/991,583
Applicant: Syed Z. Salahuddin

NOV 23 2004
NOV 23 2004

Dear Mr. Lankford:

TECH CENTER 2800
TECH CENTER 1600/2900

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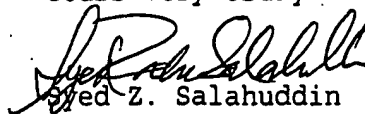
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Alternatively, I respectfully petition for re-instatement due to unavoidable and unintentional delay in responding to the Office Letter due to my not receiving the notice. Please note that I have many patents issued to me as inventor and I would most definitely have responded timely to the Office Letter if I had received it.

Thank you for your kind consideration of this petition.

Yours very truly


Syed Z. Salahuddin
Applicant/Inventor



Home

Track & Confirm

Current Status

You entered ER38 9899 395U S

Your item was delivered on April 20, 2004 at 9:21am in
ALEXANDRIA, VA 22313. The item was signed for by M BOSTON.
Additional information for this item is stored in files offline.

Track & Confirm

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| | <input type="checkbox"/> Next <input type="checkbox"/> Second | | | Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | | |
| Date to be delivered | <input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM | Postage | | Delivery Attempt | Time | Employee Signature | |
| Mo. Day Year | | \$ | | Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | | |
| Time in | Military | Return Receipt Fee | | Delivery Date | Time | Employee Signature | |
| <input type="checkbox"/> AM <input type="checkbox"/> PM | <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day | | | Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | | |
| Weight lbs. ozs. | Int'l Alpha Country Code | COD Fee | Insurance Fee | CUSTOMER USE ONLY | | | |
| No Delivery | Acceptance Clerk Initials | Total Postage & Fees | | PAYMENT BY ACCOUNT | | | |
| <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | | \$ | | Express Mail Corporate Acct. No. | | | |
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| Zaki Salahuddin | | | | Additional merchandise insurance is void if warranty of signature is requested. | | | |
| California Institute of | | | | If delivery is to be made without obtaining signature, address of addressee's agent (if delivery employee judges that article can be left in secure location) and authorizes that delivery employee's signature constitutes valid proof of delivery. | | | |
| Molecular Medicine | | | | | | | |
| 1710 Donlon St., Bldg #6 | | | | NO DELIVERY | | | |
| Ventura, CA 93003 | | | | <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | | | |
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| PRESS HARD. You are making 3 copies. | | | | attn: Examiner Blaine Lankford | | | |
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| | | | | Alexandria, VA 22313-1450 | | | |
| | | | | ZIP + 4 | | | |

DECLARATION OF SYED Z. SALAHUDDIN

I, Syed Z Salahuddin, declare as follows:

1. The facts stated herein are of my own personal knowledge, and if called upon as a witness, I could and would testify competently thereto.

2. I write this declaration with respect to Patent Application No. 09/991,583 filed November 16, 2001. I am the inventor. The assignee is California Institute of Molecular Medicine or CIMM.

3. The law firm of Foley & Lardner LLP represented CIMM on this application until the Revocation of Power of Attorney and change of correspondence address filed March 27, 2003. After March 27, 2003, Applicant's correspondence address was changed to the address of CIMM at 1710 Donlon Street, Suite 6, Ventura, CA 93003. At that time I proceeded in pro per.

4. I understand the USPTO records show an office letter was sent to CIMM on July 1, 2003. I did not receive this letter and have no record of having received this letter.

5. At all relevant times our procedure for handling incoming mail at CIMM was/is as follows: The mail would be opened by my assistant. All pertinent mail, including anything from the US Patent Office, would be brought to me. If some action were called for I would make a note to take appropriate action. The notice itself would go into the file for the patent. Our practice was and is to keep a file of materials for pending patent applications.

6. I have reviewed the file and have no record of ever having received the July 1, 2003 Office letter. I have no record of any notes pertaining to this. There is no copy of such a letter in the file. My first information pertaining to this was when I received

8/7/2006

the Notice of Abandonment dated
March 5, 2004.

I declare under penalty of perjury under the laws of the United
States that the foregoing is true and correct and this Declaration
was executed at Ventura County, California.

DATED: 8/7/06, 2006



Syed Z. Salahuddin

8/7/2006

DECLARATION OF SAIED KASHANI

1
2 I, Saied Kashani, declare as follows:

3 1. The facts stated herein are of my own personal
4 knowledge, and if called upon as a witness, I could and would
5 testify competently thereto.

6 2. I am an attorney at the law firm of Foley & Lardner
7 LLP. I write this declaration with respect to Patent
8 Application No. 09/991,583 filed November 16, 2001. Foley &
9 Lardner LLP represented the applicant on this application until
10 the Revocation of Power of Attorney and change of correspondence
11 address filed March 27, 2003. I was the attorney in charge of
12 the client relationship.

13 3. I understand the USPTO records show an office letter
14 was sent to the Applicant at the new address (not Foley &
15 Lardner's address) on July 1, 2003. I have reviewed the file
16 and docket record and have no record of receiving this letter at
17 Foley & Lardner. I became aware of the outstanding Office
18 Action when CIMM received the Notice of Abandonment dated
19 March 5, 2004, sent to 1710 Donlon Street, Suite 6, Ventura,
20 California 93003, and CIMM contacted me.

21 4. This file was handled through our San Diego office.
22 Our procedure in handling incoming notices and mail from the
23 patent office is as follows: All notices are first sent to a
24 clerk. In the San Diego office at the relevant time the clerk
25 was Karen MacNeil. The procedure is for the clerk to record the
26 notice and calendar due dates based on the notice in a central
27 computerized system. I call this procedure the "intake system".

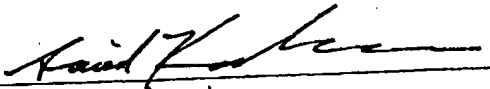
28 5. Once the power of attorney is revoked and we receive

1 notice of this from the PTO, we stop using the intake system.
2 If, for some reason, we receive a notice from the Patent Office
3 after the filing of the revocation, the notice will not go to
4 the clerk and will not be entered into the computerized system.
5 Instead, our practice is to forward the notice to the client at
6 the address of record with a cover letter that simply informs
7 the client that the attached notice was received and is being
8 forward. Our procedure is to keep a copy of the notice and
9 cover letter in the correspondence file for the client.

10 6. Attached is the printout of Foley & Lardner's
11 computerized system for the subject application. The last
12 entry in Foley's system is that the file was transferred back to
13 CIMM on May 2, 2003. Please note that this is an internal Foley
14 reference only and does not reflect any action taken by or
15 notices from USPTO. CIMM or California Institute of Molecular
16 Medicine was the assignee and our client on the file.

17 I declare under penalty of perjury under the laws of the
18 United States that the foregoing is true and correct and this
19 Declaration was executed at Los Angeles County, California.

20 DATED: Aug. 7, 2006

21 
22 Saied Kashani
23
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Patent Record Sheet

| | | | |
|--|---|--|---|
| Docket ID | 077826-2002 | Other Party | <input type="checkbox"/> |
| Alternative ID | CIMM2002 | File Reference | |
| Applicant/Patentees | | Operating Group | Calif Institute of Molecular Medici |
| Cost Centres | | Attorneys | Reiter Stephen E., Wilson Barry S. |
| Inventors | Salahuddin Syed Z | Office | San Diego |
| Country | United States of America | Prosecuting/Admin Agent | |
| Short Title | PREPARATION OF REPLICATING MACROPHAGES AND USE IN DIAGNOSIS AND THERAPY | Representative Agent | |
| | | Tax Receiver / Patent Office | Denemeyer & Co. Luxembourg |
| Convention | Pri. Claimed | Application No | 09/991583 |
| Origin | | Application Date | 16-Nov-2001 |
| Type | Patent | Grant No | |
| Sub Type | Regular | Grant Date | |
| Status | Inactive | Independent Claims | 0 |
| Sub Status | Transferred | Number of Dependent Claims | 0 |
| | | Number of Multiple Dependent Claims | 0 |
| License of Right <input type="checkbox"/> | | Small Entity <input checked="" type="checkbox"/> | File Status |
| | | Annuity Instructions | |
| Claimed Priorities & Parent Records | | | |
| Relation | Docket ID | Date | No |
| Priority | 077826-2001 | 11/17/2000 | 60/249762 |
| | | | Primary <input checked="" type="checkbox"/> |
| Long Title | | | |
| Abstract Summary | | | |
| Memo | | | |
| THIS FILE TRANSFERRED INTO SAN DIEGO FROM LA (052579/0107) | | | |
| TRANSFERRED BACK TO CIMM PER BSW 5/2/03 | | | |
| International Classes | | | |
| National Classes | | | |
| Keywords | | | |
| Products | | | |
| Practice Group | | | |
| Prior Art | | | |
| Literature | | | |
| Patents/Inventions | | | |
| Related Cases | | | |
| Diary | | | |

Patent Record Sheet

| Docketed | Action / Event Memo | Recorded No | Reminder | Due | Done/Record | Resp Party |
|-------------|---|-------------|----------|-------------|-------------|------------|
| 19-Nov-2001 | Application Date | 09/991583 | | | 16-Nov-2001 | |
| 19-Nov-2001 | No Foreign Filing | | | | 16-Nov-2001 | |
| 17-Dec-2001 | Notice of Missing Parts DTD | | | | 10-Dec-2001 | |
| 01-Apr-2002 | Filing Receipt Rec'd DTD | | | | 26-Mar-2002 | |
| 24-Sep-2002 | Projected Publication Date | | | | 12-Sep-2002 | |
| | PER NOTICE DTD 9/12/02 | | | | | |
| 06-Dec-2001 | File Amendment | | | 14-Dec-2001 | 19-Dec-2001 | |
| | NEED TO FILE APPN DATA SHEET AND AMENDMENT TO THE SPECIFICATION TO CLAIM PRIORITY | | | | | |
| 17-Dec-2001 | Response to Notice to File Missing Parts Due | | | 10-Feb-2002 | 10-Feb-2002 | |
| | DD=7/10/02; MISSING PARTS MAILDATE 12/10/01 | | | | | |
| 19-Nov-2001 | Claim for Priority 1-Mo reminder | | | 16-Feb-2002 | 16-Nov-2001 | |
| 19-Nov-2001 | Information Disclosure Statement Due | | | 16-Feb-2002 | 16-Feb-2002 | |
| 17-Dec-2001 | Response to Notice to File Missing Parts Due/ 1st Extension | | | 10-Mar-2002 | 10-Feb-2002 | |
| | DD=7/10/02; MISSING PARTS MAILDATE 12/10/01; FILED 2/10/02 VIA FAX | | | | | |
| 18-Mar-2002 | Response to Notice to File Missing Parts/1st extension | | | 10-Mar-2002 | 10-Mar-2002 | |
| 30-Apr-2002 | Check accuracy of Priority claim - 3 day URGENT Reminder | | | 13-Mar-2002 | 30-Apr-2002 | |
| 18-Mar-2002 | Check accuracy of Priority claim - Final | | | 16-Mar-2002 | 16-Nov-2001 | |
| 19-Nov-2001 | Check accuracy of Priority claim | | | 16-Mar-2002 | 16-Nov-2001 | |
| 17-Dec-2001 | Response to Notice to File Missing Parts/2nd Extension | | | 10-Apr-2002 | 10-Feb-2002 | |
| 17-Dec-2001 | Response to Notice to File Missing Parts/3rd Extension | | | 10-May-2002 | 10-Feb-2002 | |
| 21-Feb-2002 | IDS Extended | | | 16-May-2002 | 30-Apr-2002 | |
| | SENT TO WASH DC FOR HAND-DELIVERY 4/29/02; AWAIT CONFIRMATION | | | | | |
| 01-Apr-2002 | 6-Month Foreign Filing Reminder Letter | | | 16-May-2002 | 16-May-2002 | |
| 17-Dec-2001 | Response to Notice to File Missing Parts/ 4th Extension | | | 10-Jun-2002 | 10-Feb-2002 | |
| 17-Dec-2001 | Response to Notice to File Missing Parts/5th Extension FINAL | | | 10-Jul-2002 | 10-Feb-2002 | |
| 01-Apr-2002 | 9-Month Foreign Filing Reminder | | | 16-Aug-2002 | 06-Aug-2002 | |
| 01-Apr-2002 | 11-Month Foreign Filing Reminder | | | 16-Oct-2002 | 16-Oct-2002 | |
| | REMINDER L/C 8/6/02 | | | | | |
| 01-Apr-2002 | Foreign Filing DEADLINE | | | 16-Nov-2002 | 24-Oct-2002 | |
| 19-Nov-2001 | 18 Month Publication | | | 16-May-2003 | 12-Sep-2002 | |

Additional Fields

Claimed Invention

Assigned

Drawings sheets no.

Examiner Name

Family ID

Group Art Unit

Specification Number of

Page

Date created 19-Nov-2001

Created by KMACNEIL

Date Amended 02-May-2003

Updated by KMACNEIL

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